

BEFORE THE  
BOARD OF PSYCHOLOGIST EXAMINERS  
STATE OF OREGON

IN THE MATTER OF:	)	FINAL ORDER ADOPTING
	)	RULING ON MOTION FOR
KEITH JACKSON	)	SUMMARY DETERMINATION
	)	
	)	Agency Case No.: 2013-029

**HISTORY OF THE CASE**

On April 9, 2014, the Board of Psychologist Examiners (Board) issued a Notice of Intent to Impose Civil Penalty to Keith Jackson, seeking to impose a civil penalty of \$5,000 against Jackson. On April 25, 2014, Jackson requested a hearing.

On May 2, 2014, the Board referred the matter to the Office of Administrative Hearings (OAH). The OAH assigned Administrative Law Judge (ALJ) Samantha Fair to preside over the matter. On July 17, 2014, ALJ Fair convened a telephone prehearing conference and scheduled the hearing for September 17, 2014 and set deadlines for submissions of motions, witness lists, and exhibits.

On July 30, 2014, the Board filed a Motion for a Protective Order. On July 31, 2014, ALJ Fair granted the Motion and issued a Qualified Protective Order.

On August 12, 2014, the Board filed a Motion for Summary Determination (Motion). By letter dated August 14, 2014, ALJ Fair informed Jackson that his deadline to submit a response to the Motion was August 27, 2014. On September 2, 2014, the record closed without receipt of any response.

On September 3, 2014, ALJ Samantha Fair issued a Ruling on Motion for Summary Determination and Proposed Order, which was placed in the mail on the same day. In the Ruling, Jackson was informed that he must file any written exceptions (objections) within ten (10) days after mailing of the proposed order. The Board has not received any written exceptions.

**ISSUES**

1. Whether there is a genuine issue as to any material fact and whether the Board is entitled to a favorable ruling as a matter of law. OAR 137-003-0580.

2. Whether Keith Jackson represented that he was a psychologist without having the appropriate license. ORS 675.020(1) and (2).

3. Whether Keith Jackson engaged in the practice of psychology without a license. ORS 675.020(1) and (2).

4. If Keith Jackson violated ORS 675.020, should he be assessed a civil penalty of \$5,000. ORS 675.070(1) and (3).

### EVIDENTIARY RULING

Attachments A through E and Exhibit F, offered by the Board, were admitted into the record.<sup>1</sup>

### FINDINGS OF FACT

1. Jackson is licensed as a Marriage and Family Therapist in the State of California. (Att. D at 3.) The Board has never issued Jackson a license to practice psychology in the State of Oregon. (Att. A at 1.) Two Board employees told Jackson “that there is a currently a provision for me to counsel in the state as long as I make known to my clients that I am licensed in another state, and use the title of Marriage and Family Therapist, instead of Marriage and Family Counselor.” (Att. D at 3.)

2. Jackson has websites advertising his services listing a physical location in Portland, Oregon. (Att. B at 1, 3.) The following information appears on the website:

- Jackson is identified as “Keith E. Jackson, MA, MFT, MFC 48284,” a “Marriage Family Therapist,” a “licensed Marriage and Family Therapist (California),” and a “psycho-therapist” on different pages of the websites; (Atts. B at 1-2; C at 1-2.)
- Jackson offers the following services: individual therapy, couples therapy, and family therapy; (Att. B at 1.)
- Jackson identifies his treatment orientation specialties as cognitive behavioral, existential, and couples counseling; (*Id.* at 2.)
- Jackson offers treatment for depression, anxiety, relationship/marriage issues, self-esteem, and parenting; and (*Id.* at 3.)
- Jackson’s rates are listed as \$60 to \$80 per hour. (Att. C at 1.)

3. On April 24, 2013, Patient VW, an adult female and Oregon resident, completed an intake appointment with Jackson at his Portland location. VW identified her reasons for seeking counseling as health, sexual and intimacy problems; relationships with spouse, boy/girlfriend, partner, other; and symptoms such as stress, anxiety, depression, sadness. (Att. E at 1-3.) Jackson completed a Psychosocial Intake Report regarding VW identifying the presenting problem as VW reporting depression following suicide attempts by two of her children and

---

<sup>1</sup> In its Motion, the Board refers to A through F as Attachments. Although A through E were marked as Attachments, F was marked as an Exhibit.

allegations of child abuse brought against her current husband. (*Id.* at 4.) On a Multi-axial Assessment Form, Jackson noted VW as having an Axis I diagnosis of major depression, 296, and an Axis II diagnosis of borderline personality disorder, 301.83. (*Id.* at 5.) At the end of the intake appointment, Jackson determined to “triage” VW’s issues and intended to “focus on the depression issue to get the client fully functional.” (*Id.* at 14.)

4. On May 8, 2013, VW had a counseling session with Jackson. In the progress notes, Jackson noted that VW was “very depressed talk about suicide.” (Att. E at 15.) Jackson had VW sign a contract in which she agreed that she would not attempt to cause herself harm (no harm contract). He also worked with her to develop some positive coping mechanisms. (*Id.* at 15-16)

5. On May 15, 2013, VW had a counseling session with Jackson. In the progress notes, Jackson noted that VW’s presenting problem was major depression and suicidal ideation. VW represented to Jackson that, on May 13, 2013, she had considered suicide by consuming a handful of pills. For treatment, Jackson obtained family history information from VW and noted that VW equates sex with love. He also noted that discussing the difference between sex and love would occur in their next counseling session. (Att. E at 8.)

6. Following a counseling session with VW on June 12, 2013, Jackson noted the following in her records:

[T]he client’s behaviors are deep rooted and there is some resistance to the thought of change. I believe the client suffers from Borderline Personal Disorder, which features sexual impulsivity. If the client does not choose address this issue I feel can be of little or no assistance to her. Prognosis is not good.

(Att. E at 6.)

7. Jackson’s treatment records for VW contain no reference to any consultation with doctors or psychologists or copies of any records from such professionals. (Att. E.) Jackson advised VW to contact a psychologist or medical doctor and provided her a phone number for a psychologist. Subsequently, he asked her if she had contacted the psychologist. After VW advised that she had an appointment scheduled with the psychologist, Jackson made no further inquiries regarding her contacts with the psychologist. (Att. D at 3.)

8. It is the practice of psychology to issue diagnoses of mental health conditions and to make treatment recommendations for such conditions. An Axis I diagnosis of major depression with diagnostic code of 296 and an Axis II diagnosis of borderline personality disorder with a diagnostic code of 301.83 are diagnoses of mental health conditions. (Ex. F at 1.)

### CONCLUSIONS OF LAW

1. There is no genuine issue as to any material fact and whether the Board is entitled to a favorable ruling as a matter of law

2. Keith Jackson represented that he was a psychologist without having the appropriate license.
3. Keith Jackson engaged in the practice of psychology without a license.
4. Keith Jackson should be assessed a \$5,000 civil penalty.

## OPINION

### Standard of Review for Motion for Summary Determination

OAR 137-003-0580 addresses motions for summary determination. It provides, in relevant part:

- (6) The administrative law judge shall grant the motion for a summary determination if:
  - (a) The pleadings, affidavits, supporting documents (including any interrogatories and admissions) and the record in the contested case show that there is no genuine issue as to any material fact that is relevant to resolution of the legal issue as to which a decision is sought; and
  - (b) The agency or party filing the motion is entitled to a favorable ruling as a matter of law.
- (7) The administrative law judge shall consider all evidence in a manner most favorable to the non-moving party or non-moving agency.
- (8) Each party or the agency has the burden of producing evidence on any issue relevant to the motion as to which that party or the agency would have the burden of persuasion at the contested case hearing.

\* \* \* \* \*

- (12) If the administrative law judge's ruling on the motion resolves all issues in the contested case, the administrative law judge shall issue a proposed order in accordance with OAR 137-003-0645 incorporating that ruling \* \* \*.

Pursuant to OAR 137-003-0580(6)(a), in making the ruling, ALJ Fair considered the Board's Motion and Attachments A – E and Exhibit F. Pursuant to OAR 137-003-0580(7), the ALJ reviewed the evidence in the light most favorable to Jackson, the non-moving party. ALJ Fair concluded that there are no genuine issues as to the material facts of the Board's allegations that are relevant to resolution of the legal issues and, based upon those undisputed material facts,

the Board is entitled to a favorable ruling. As a result, ALJ Fair granted the Board's Motion for summary determination.

Because the ruling on the Motion resolves all issues in this matter, a proposed order was issued and the hearing was canceled.

Representing Oneself as a Psychologist and Practicing Psychology Without a License

The Board sought to assess a civil penalty against Jackson based on allegations that he represented himself as a psychologist and engaged in the practice of psychology without the appropriate license. As the proponent of the allegations, the Board has the burden to establish, by a preponderance of the evidence, that the alleged conduct occurred and that it is entitled to assess the civil penalty. ORS 183.450(2) ("The burden of presenting evidence to support a fact or position in a contested case rests on the proponent of the fact or position"); *Harris v. SAIF*, 292 Or 683, 690 (1982) (general rule regarding allocation of burden of proof is that the burden is on the proponent of the fact or position). Proof by a preponderance of the evidence means that the fact finder is persuaded that the facts asserted are more likely than not true. *Riley Hill General Contractor v. Tandy Corp.*, 303 Or 390, 402 (1987).

ORS 675.020 provides, in part:

(1) To safeguard the people of the State of Oregon from the dangers of unqualified and improper practice of psychology, no person shall, unless exempted from the provisions of ORS 675.010 to 675.150 by ORS 675.090:

(a) Practice psychology in this state without first being licensed under ORS 675.010 to 675.150; or

(b) Represent oneself to be a psychologist without first being licensed under ORS 675.010 to 675.150.

(2) As used in subsection (1)(b) of this section, "represent oneself to be a psychologist" means to use any title or description of services incorporating the words "psychology," "psychological," "psychotherapy" or "psychologist," or to offer or render to individuals or to groups of individuals services included in the practice of psychology[.]

On his websites in which he advertises services he performs in Oregon, Jackson identifies himself as a "psycho-therapist." Additionally, he offers services to the public for the treatment of mental health conditions, such as depression and anxiety, which is the practice of psychology. Because Jackson has never been licensed by the Board to practice psychology, his representation as a psychotherapist and his offer to perform services for the treatment of mental health

conditions are violations of ORS 675.020(1)(b).<sup>2</sup>

During his intake appointment with VW, Jackson diagnosed her with two mental health conditions, major depression and borderline personality disorder. At the end of the intake appointment, he determined to focus on the treatment of VW's depression. In a subsequent session, he discussed her depression, had her sign a no harm contract, and helped her develop coping mechanisms. Additionally, on June 12, 2013, Jackson concluded that VW's sexual issues were a feature of her borderline personality disorder and that her prognosis was poor because she was not addressing the issue. In the previous appointment with VW, Jackson found that VW equated sex with love, and he documented his intention to explore the difference with her in subsequent appointments. Although Jackson asserted that he did not treat VW's borderline personality disorder, his conclusion that her sexual issues were related to her borderline personality disorder and his determination to focus on that issue in subsequent counseling sessions demonstrated that he developed a treatment plan for VW in an attempt to address her borderline personality disorder. By diagnosing VW with two mental health conditions and treating VW for those two conditions, Jackson violated ORS 675.020(1)(a) by engaging in the practice of psychology without the required license.

Jackson asserted that the Board should be equitably estopped from assessing the civil penalty because two Board employees advised him that he can "counsel in the state as long as I make known to my clients that I am licensed in another state, and use the title of Marriage and Family Therapist, instead of Marriage and Family Counselor."

Equitable estoppel is rarely applicable against state agencies and should be applied cautiously. *Employment Div. v. Western Graphics Corp.*, 76 Or App 608, 612 (1985). Generally, equitable estoppel has been applied "only in cases where the individual asserting estoppel has been deprived of a benefit that would have been received but for the government's misleading conduct." *Id.* at 612-614. A claimant is not entitled to "a windfall as a result of the government's mistake and erroneous advice." *Id.* First, Jackson was not deprived of a benefit that he would have received but for the employees' conduct. Additionally, although the Board employees indicated he could provide "counsel" to clients, the Board employees did not advise Jackson that he could practice psychology or that he could diagnosis clients and provide treatment recommendations for any mental health diagnoses he made. Because there was no evidence that Jackson was deprived of a benefit and no evidence that the Board engaged in any misleading conduct, the principles of equitable estoppel are not applicable in this matter.

#### Assessment of Civil Penalties

ORS 675.070 provides, in part:

(1) Where any of the grounds enumerated in subsection (2) of this section exist, the State Board of Psychologist Examiners may impose any of the following sanctions:

---

<sup>2</sup> There was no evidence that Jackson qualified for any exemptions contained in ORS 675.090.

\* \* \* \* \*

(g) Impose a civil penalty as set forth in subsection (3) of this section.

(2) Grounds exist for imposition of any of the sanctions enumerated in subsection (1) of this section against any psychologist or psychologist associate or applicant, or, where applicable, any unlicensed person found in violation of ORS 675.010 to 675.150, when, in the judgment of the board, the person:

\* \* \* \* \*

(h) Has violated any provision of ORS 675.010 to 675.150 or any provision of the code of professional conduct formulated under ORS 675.110 (12); or

\* \* \* \* \*

(3) The board may impose a civil penalty under subsection (1) of this section:

(a) In an amount not to exceed \$5,000; or

(b) In an amount not to exceed \$10,000, if any of the following conditions exist:

\* \* \* \* \*

(E) The person subject to the penalty violated ORS 675.020 by practicing psychology or representing that the person is a psychologist without having a license[.]

The Board seeks to assess Jackson a civil penalty in the amount of \$5,000. As shown above, Jackson violated ORS 675.020(1)(a) and (b) in his advertisements of his services and his diagnosis and treatment of VW. Pursuant to ORS 675.070, the Board may impose a civil penalty of \$10,000 because Jackson's violations of ORS 675.020 involved practicing psychology and representing himself as a psychologist without having required license. Because the amount of the proposed assessment is within the limits set by ORS 675.070(3) and there is no evidence that the Board abused its discretion in its assessment of \$5,000, ALJ Fair concluded that the proposed penalty is reasonable and appropriate. Jackson must pay a civil penalty in the amount of \$5,000.

### **RULING AND ORDER**

The Board of Psychologist Examiners adopts ALJ Fair's ruling and order, in which the Motion for Summary Determination was granted. This negates the need for a hearing, which was cancelled by the ALJ's ruling.

The Board of Psychologist Examiners issues the following order:

Keith Jackson must pay the Board of Psychologist Examiners a civil penalty of \$5,000, payable in full 10 days after the Order imposing the civil penalty becomes final by operation of law or on appeal, pursuant to ORS 183.745.

IT IS SO ORDERED this 14 day of November, 2014.

BOARD OF PSYCHOLOGIST EXAMINERS  
State of Oregon

Redacted

FRAN FERDER, Ph.D.  
Board Chair

**Right to Judicial Review**

**NOTICE:** You are entitled to judicial review of this Order. Judicial review may be obtained by filing a petition for review with the Oregon Court of Appeals within 60 days after the final order is served upon you. See ORS 183.482. If this Order was personally delivered to you, the date of service is the day it was mailed, not the day you received it. If you do not file a petition for judicial review within the 60 days' time period, you will lose your right to appeal.

1  
2 BEFORE THE  
3 BOARD OF PSYCHOLOGIST EXAMINERS  
4 STATE OF OREGON

5 In the Matter of the Conduct of: ) AGENCY NO: OBPE #2013-029  
6 KEITH JACKSON )  
7 Respondent ) NOTICE OF INTENT TO IMPOSE CIVIL  
 ) PENALTY  
8 )

9 1.

10 The Board of Psychologist Examiners (Board) is the state agency responsible for  
11 licensing and disciplining psychologists, and for regulating the practice of psychology in the  
12 State of Oregon. The Board is also responsible for enforcing the laws against the unlicensed  
13 practice of psychology in the state of Oregon. Keith Jackson (Respondent) is not licensed by the  
14 Board to practice psychology in the state of Oregon.

15 2.

16 The Board proposes to impose a civil penalty of \$5,000 against Respondent, pursuant to  
17 ORS 675.020(1)(a) and (2), ORS 675.070(1)(g) and ORS 675.070(3)(b)(E), for engaging in the  
18 unlicensed practice of psychology and by representing himself to be a psychologist by offering  
19 or rendering services included in the practice of psychology.

20 3.

21 Respondent's violations of ORS 675.020(1)(a) and (2), ORS 675.070(1)(g) and ORS  
22 675.070(3)(b)(E) are more particularly described below:

23 3.1 Respondent is not a licensed psychologist, and does not hold a license in any  
24 health care profession in the State of Oregon. Nevertheless, Licensee has multiple  
25 advertisements and written representations on the internet stating that Respondent is a "Marriage  
26 Family Therapist," that he provides "Individual Therapy," "Couples Therapy," and "Family

1 Therapy.” At the website [www.portlandtherapycenter.com](http://www.portlandtherapycenter.com), Respondent represents to the public  
2 that he treats depression and anxiety and that he has the following specialties: “Cognitive  
3 Behavioral,” “Existential,” and “Couples Counseling.” Respondent also lists on his website the  
4 following issues that he addresses: “Domestic Abuse, Drug Dependence/Abuse/Addiction,  
5 Family Conflict.” Respondent has informed the Board that he uses the title of “Marriage and  
6 Family Therapist” because he holds such a license in California. By making the aforementioned  
7 statements to the public, Respondent has represented to the public that he offers therapy services  
8 to individuals for the purpose of diagnosing, or treating behavioral, emotional or mental  
9 disorders without an appropriate license, in violation of ORS 675.020(1)(a) and (2).

10 3.2 Respondent met with VW, an adult female, and diagnosed her with depression  
11 and borderline personality disorder and attempted to treat these conditions. By meeting with a  
12 client and diagnosing her to have mental health disorders, Respondent violated ORS  
13 675.020(1)(a) and (2), practicing psychology in this state without first being licensed.

14 4.

15 The Board has authority to impose a civil penalty of up to \$10,000 against Respondent  
16 for practicing psychology without a license or representing that he offers services included in the  
17 practice of psychology without having a license to practice psychology, pursuant to ORS  
18 675.020(1)(a) and (2), ORS 675.070(1)(g), and ORS 675.070(3)(b)(E).

19 5.

20 Respondent has the right, if Respondent requests, to have a formal contested case hearing  
21 before an Administrative Law Judge to contest the matter set out above, as provided by Oregon  
22 Revised Statutes 183.310 to 183.497. At the hearing, Respondent may be represented by an  
23 attorney and subpoena and cross-examine witnesses.

24

25

26

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

6.

If Respondent requests a hearing, the request must be made in writing to the Board, must be received by the Board within thirty (30) days from the mailing of this notice, and must be accompanied by a written answer to the charges contained in this notice. Before commencement of the hearing, Respondent will be given information on the procedures, right of representation and other rights of parties relating to the conduct of the hearing as required under ORS 183.413-415.

7.

**NOTICE TO ACTIVE DUTY SERVICEMEMBERS:** Active duty servicemembers have a right to stay these proceedings under the federal Servicemembers Civil Relief Act. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 800-452-7500 or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>.

8.

If Respondent fails to request a hearing within 30 days, or fails to appear at the hearing as scheduled, the Board may issue a final order by default and impose the above sanctions against Respondent. Respondent's submissions to the Board to-date regarding the subject of this disciplinary case and all information in the Board's files relevant to the subject of this case automatically become part of the evidentiary record of this disciplinary action upon default for the purpose of proving a *prima facie* case. ORS 183.417(4).

DATED this 9<sup>th</sup> day of April, 2014.

BOARD OF PSYCHOLOGIST EXAMINERS  
State of Oregon

Redacted

Becky Eklund  
Executive Director